



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,735	05/08/2006	Bruce G. Kania	FOU06-0002	5516
45766 7590 06/05/2008 ANTOINETTE M. TEASE P. O. BOX 51016 BILLINGS, MT 59105				
EXAMINER VALENTI, ANDREA M				
ART UNIT		PAPER NUMBER		
3643				
MAIL DATE		DELIVERY MODE		
06/05/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/595,735

**Applicant(s)**

KANIA ET AL.

**Examiner**

ANDREA M. VALENTI

**Art Unit**

3643

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-121 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

**Species 1A:** Floating Habitat with buoyant growth medium (BGM) and gas producing microorganisms, claim 1, 38-41, 93, 97.

**Species 1B:** Floating Habitat with buoyant growth medium (BGM) and inflatable bladders, claims 2-6, 38-41, 93, 97.

**Species 1C:** Floating habitat flotation unit, source of compressed air and connection, claims 7-25, 38-41, 42, 43, 93, 97.

**Species 1D:** Floating habitat with BGM and self-compensating buoyancy system, claims 26-29, 38-41, 93, 97

**Species 1E:** Floating habitat with self compensating inflation device, compressed air, inflatable bladders, connection, claims 30-33, 38-41.

**Species 1F:** Floating habitat with BGM and waterfowl nesting structures, claim 34-37, 93, 97, 39-41.

**Species 1G:** Floating habitat with a bottom, sides, top, interior filling, artificial plants, water permeable but roots can not penetrate bottom and sides, claims 44-45, 50-53, 93.

**Species 1H:** Floating habitat with a bottom, sides, top, interior filling, natural plants, water permeable but roots can not penetrate bottom and sides claims 46-53, 93.

**Species 1I:** Floating habitat of polyester mesh scraps, claims 54-79

**Species 1J:** Floating habitat with nonwoven mesh material, natural covering, brush attachment wires, pieces of natural brush, claims 80-81, 93.

**Species 1K:** Floating habitat with nonwoven mesh material, synthetic material covering, brush attachment wires, pieces of natural brush, claim 82, 93.

**Species 1L:** Floating habitat of nonwoven polyester mesh and one or more nesting cavities, claims 83-91, 93.

**Species 1M:** Floating habitat with BGM and an anchor tether, claim 92.

**Species 1N:** Floating habitat with BGM and compressed air source, claims 94-99.

**Species 1O:** Floating habitat solar powered electric shocking system, shocking pipes, electrodes, spikes, claims 100-113.

**Species 1P:** Floating habitat upwardly sloping edge, claim 114.

**Species 1Q:** Floating habitat with duckling jump locations, claim 115.

**Species 2A:** claim(s) 116, drawn to method of providing safe habitat for juvenile waterfowl.

**Species 3A:** claim(s) 117, drawn to method of encouraging colony nesting.

**Species 4A:** claim(s) 118, drawn to method of allowing a variety of waterfowl or shore birds to enjoy suitable habitat on a floating habitat system.

**Species 5A:** claim(s) 119, drawn to method of decreasing buoyancy of the floating habitat.

Art Unit: 3643

**Species 6A:** claim(s) 120, drawn to method of using compressed air to reduce ice damage and increase open water season.

**Species 7A:** claim(s) 121, drawn to method of manufacturing a floating habitat.

Upon election of group 1B only, the applicant is further required to elect one of the following disclosed species. The species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

**Species 1Ba:** transparent bladder:

**Species 1Bb:** opaque bladder

The species are as follows:

**Species 1Bi:** rigid bladder

**Species 1Bii:** flexible bladder

Upon election of group 1C only, the applicant is further required to elect one of the following disclosed species. The species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

**Species 1Ca:** wind powered

**Species 1Cb:** photoelectric

Art Unit: 3643

**Species 1Cc:** wave powered

**Species 1Cd:** top and bottom mesh are pliable

**Species 1Ce:** top and bottom mesh are rigid

Upon election of group 1N only, the applicant is further required to elect one of the following disclosed species. The species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

**Species 1Na:** natural

**Species 1Nb:** synthetic

Upon election of group 1O only, the applicant is further required to elect one of the following disclosed species. The species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

**Species 1Oa:** plastic spikes

**Species 1Ob:** metal spikes

**Species 1Oc:** glass spikes

**Species 1Od:** porcupine quill spikes

**Species 1Oe:** stainless steel porcupine wire spikes

**Species 1Of:** stainless steel polycarbonate spikes

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The following claim(s) are generic: no generic claim has been identified.

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does

not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

### ***Conclusion***

The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement



is withdrawn by the examiner before the patent issues. See MPEP § 804.01. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANDREA M. VALENTI whose telephone number is (571)272-6895. The examiner can normally be reached on 6:00am-4:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Andrea M. Valenti/  
Primary Examiner, Art Unit 3643

4 June 2008